IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2)(b)
Description of case

Appeal From Order No. 399 of 2006

Date of decision: 18th October, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 399 of 2006

1. Smt. Shobha Devi W/o Late Sri Sabar Singh.
2. Km. Rashmi D/o Late Sri Sabar Singh.
3. Master Rahul S/o Late Sri Sabar Singh.
4. Ramchandi Devi W/o Sri Vishan Singh.
5. Sri Vishan Singh S/o Sri Gopal Singh.
   All R/o Kimar Gram Panchayat – Kudjholi,
   Patti Koidiya, Tehsil Lansdown,
   District Pauri Garhwal. …… Appellants

Versus

1. New India Insurance Company Ltd.,
   Branch Kotdwar, through Divisional Manager,
   Ranipur Mod, Haridwar.
2. Hamendra Singh C/o G.M.O.U. Ltd.,
   Kotdwar, District Pauri Garhwal.
3. Bhupendra Singh C/o G.M.O.U. Ltd.,
   Kotdwar, District Pauri Garhwal. ……. Respondents

Mr. Pramod Belwal, Advocate for the appellants.
Mr. B.K. Gupta, Advocate for respondent No. 1.
Mr. Raman Kumar Shah, Advocate for respondents Nos. 2& 3.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

RAJEEV GUPTA, C. J. (Oral)

This is claimants' appeal for enhancement of the compensation awarded by Motor Accident Claims Tribunal / District Judge, Pauri Garhwal vide Award dated 27.09.2004 passed in Motor Accident Claim Petition No. 217 of 2003.

2. The claimants, who are unfortunate widow; minor children and parents of deceased Sabar Singh, claimed compensation of Rs. 21,10,000/- for his death in the motor accident on 23.11.2003 when he was dashed by the offending vehicle Bus bearing registration No. UP20-H-796 resulting in his instantaneous death on the spot

itself. On the report about the accident, a criminal case was registered at Crime No. 1730 of 2003 at Police Station Kotdwar against the driver of the Bus for the alleged commission of the offences punishable under Sections 279 and 304-A of the I.P.C. The claimants pleaded that deceased Sabar Singh, working as Peon in Hill Guards and Services Pvt. Ltd., Chitranjan Park, New Delhi, was getting monthly salary of Rs. 5,498.90/.

3. The owner and the insurer of the offending vehicle Bus contested the claim and denied their liability to pay compensation to the claimants. The owner took the plea that the deceased himself was negligent, whereas the insurer denied the accident itself.

4. The claimants examined PW1 Smt. Shobha Devi and PW2 Laxman Singh in support of their claim, whereas the owner examined himself as OPW1. The insurer, however, did not examine any witness.

5. The Tribunal, on a close scrutiny of the evidence led by the parties, held that Sabar Singh died on account of the injuries sustained by him in the motor accident on 23.11.2003; the accident occurred due to the rash and negligent driving of the driver of the offending vehicle Bus; and the insurer of the Bus was liable to pay compensation to the claimants.

6. Relying upon the evidence led by the claimants about the income of the deceased including his salary certificate, the Tribunal assessed his income at Rs. 5,500/- per month and Rs. 66,000/- per annum. After deducting 1/3rd as the personal expenses of the deceased and using the multiplier of '17', the Tribunal worked out the compensation at Rs. 7,48,000/. The Tribunal further deducted 1/3rd of the said amount on account of the lump sum payment of compensation to the claimants and awarded a sum of Rs. 4,98,667/-as

compensation to the claimants for the death of Sabar Singh in the motor accident. The Tribunal, further, directed the insurer to pay interest at the rate of 9% per annum in the event of its failure to pay the amount of compensation to the claimants within a period of two months from the date of the Award.

8. Mr. Pramod Belwal, the learned counsel for the appellants submitted that the Tribunal has erred in making a further deduction of 1/3rd of Rs. 7,48,000/- assessed as compensation on account of the lump sum payment of compensation to the claimants; and in not awarding any interest on the amount of compensation and in directing only a conditional payment of interest in the event of the insurer's failure to pay the compensation to the claimants within a period of two months from the date of the Award.

9. Mr. B.K. Gupta, the learned counsel for respondent No. 1 New India Insurance Company Ltd., on the other hand, submitted that the Tribunal has been quite liberal in awarding substantial compensation of Rs. 4,98,667/-, which is just and proper in the facts and circumstances of the case.

10. Mr. Raman Kumar Shah, the learned counsel for respondents Nos. 2 & 3 also supported the Award.

11. The findings recorded by the Tribunal that deceased Sabar Singh died on account of the injuries sustained by him in the motor accident on 23.11.2003; the accident occurred due to the rash and negligent driving of the driver of the offending vehicle Bus; and the insurer of the Bus was liable to pay compensation to the claimants have, now, attained finality as the respondents have not filed any appeal against the Award.

12. The assessment of compensation of the Tribunal cannot be upheld as the Tribunal, certainly, has fallen into error in deducting 1/3rd of the amount of compensation assessed by it on account of the lump sum payment of compensation to the claimants. As the said deduction cannot be justified, the compensation is required to be recomputed.

13. In a motor accident claim case, what is important is that the compensation to be awarded by the Tribunal / Court should be just and proper compensation in the facts and circumstances of the case. The Apex Court, in the case of **T.N. State Transport Corpn. Ltd. Vs. S. Rajapriya and others** reported in **(2005) 6 Supreme Court Cases 236,** observed in paras 8 to 10 & 17:

> "8. The assessment of damages to compensate the dependents is beset with difficulties because from the nature of things, it has to take into account many imponderables e.g. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income together.
>
> 9. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of years' purchase.
>
> 10. Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the

> overall picture that matters", and the court must try to assess as best as it can the loss suffered.
>
> 17. Considering the age of the deceased and the principles indicated above, the appropriate multiplier would be 12 and not 16 as adopted by the Tribunal and affirmed by the High Court. By applying multiplier 12, amount of compensation is fixed at Rs 4,50,000 (in round figures)……..."

14. Reverting to the present case, the Tribunal assessed the income of the deceased at Rs. 5,500/- per month and Rs. 66,000/- per annum on the basis of the evidence led by the claimants including his salary certificate. On a close scrutiny of the evidence available on record, we affirm the finding recorded by the Tribunal in that behalf.

15. By deducting 1/3rd of Rs. 66,000/- as the personal expenses of the deceased, the claimants' dependency is assessed at Rs. 44,000/- per annum.

16. Considering the age of the deceased; his widow; minor children; and parents and the amount of annual dependency of Rs. 44,000/- assessed hereinabove, we are of the opinion that multiplier of '12' would be appropriate in the case in view of the dictum of the Apex Court in the case of S. Rajapriya (supra).

17. By multiplying the annual dependency of Rs. 44,000/- with the multiplier of '12', the compensation worked out to Rs. 5,28,000/-. The claimants are further entitled to Rs. 2,000/- towards Funeral Expenses and Rs. 5,000/- for Loss of Consortium to the widow. Thus, the claimants become entitled to receive a total sum of Rs. 5,35,000/- as compensation for the death of deceased Sabar Singh in the motor accident.

18. The Tribunal has fallen into error in not awarding any interest to the claimants on the amount of compensation. By directing only a

conditional payment of interest in the event of insurer's failure to pay the amount of compensation to the claimants within a period of two months from the date of the Award, the Tribunal has deprived the claimants of the amount of interest, which was otherwise payable to them. With a view to avoid any possible delay in the computation of the amount of interest by the Claims Tribunal, we deem it proper to quantify the same ourselves. The accident, in the present case, took place on 23.11.2003 and the claim petition was filed on 20.02.2004. The impugned Award was passed on 27.09.2004 and the Insurance Company must have deposited the amount of compensation on or before 27.11.2004. Considering the above-mentioned relevant factors, we quantify the amount of interest at Rs. 35,000/-.

19. Thus, the claimants are entitled to receive a total sum of Rs. 5,70,000/- (Rupees Five Lakhs and Seventy Thousand only) [Rs. 5,35,000/- as Compensation + Rs. 35,000/- as Interest].

20. For the foregoing reasons, the appeal filed by the appellants under Section 173 of the Motor Vehicles Act for enhancement of the compensation is allowed in part. The compensation of Rs. 4,98,667/- awarded by the Tribunal is enhanced to Rs. 5,35,000/- (Rupees Five Lakhs and Thirty Five Thousand only) with further quantified interest of Rs. 35,000/- (Rupees Thirty Five Thousand only).

21. Respondent No. 1 New India Insurance Company Ltd. is directed to deposit the enhanced amount of compensation and quantified Interest of Rs. 35,000/- within a period of two months from today before the concerning Claims Tribunal. The amount of interest, if any, deposited by the Insurance Company before the Claims Tribunal in satisfaction of the impugned Award due to its failure to deposit the compensation within the stipulated period of two months, shall be given due adjustment against the quantified amount of Rs. 35,000/- towards Interest.

22. No order as to costs.

(Rajesh Tandon, J.) **(Rajeev Gupta, C.J.)**
18.10.2006 18.10.2006

G